IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 21221 of 2007(B)

PETITIONER:

SREE BHAGAVATHY HANDLOOM WEAVER'S
CO-OPERATIVE SOCIETY LTD., KELESWARAM,
KALLIYOOR P.O., THIRUVANANTHAPURAM-42,
REPRESENTED BY THE SECRETARY VISWAMBARAN.S.

BY ADV. SRI.GEORGE POONTHOTTAM
SRI.T.R.RAVI
SRI.K.RAMAKUMAR

RESPONDENTS:
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1. KERALA STATE CO-OPERATIVE BANK LTD.,
COBANK TOWERS, NEAR MUSCAT HOTEL,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
CHIEF GENERAL MANAGER.

2. THE TRIVANDRUM CO-OPERATIVE DISTRICT
WHOLE SALE SOCIETY LTD.NO.4, REPRESENTED BY
ITS SECRETARY, HEAD OFFICE, PUTHENCHANTHAI,
THIRUVANANTHAPURAM.

3. THE COMMISSIONER OF POLICE,
THIRUVANANTHAPURAM.

4. THE SUB INSPECTOR OF POLICE,
VANCHIYOOR POLICE STATION,
THIRUVANANTHAPURAM.

BY SR. ADV. SRI. K. RAMAKUMAR
BY ADV. SRI.NAGARAJ NARAYANAN,SC,K.S.CO-OP BANK
SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.
R3 & R4 BY GOVT. PLEADER SRI. P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.21221 OF 2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: STRUE COPY OF THE ORDER NO.CS9/7919/94 DATED 19.7.1994.

EXT.P2: TRUE COPY OF THE PLAINT IN O.S.461/2001 DATED 24.6.2001.

EXT.P3: TRUE COPY OF THE DECREE IN O.S.NO.461/2001 DATED 20.8.04 INCORPORATING THE COMPROMISE.

EXT.P4: TRUE COPY OF THE NOTICE DATED 1.6.2007

EXT.P5: STRUE COPY OF THE COMPLAINT SUBMITTED BEFORE THE 4TH RESPONDENT DATED 9.6.2007.

EXT.P6: TRUE COPY OF THE ACKNOWLEDGMENT ISSUED BY 3RD RESPONDENT.

EXT.P7: TRUE COOPUY OF ACKNOWLEDGMENT ISSUED BY 4TH RESPONDENT DT. 9.6.07

EXT.P8: TRUE COPY OF THE JUDGMENT IN O.S.NO.1010/2007 DATED 5.7.2007.

RESPONDENTS' EXIBITS:

EXT.R1(A): TRUE COPY OF THE PLAINT IN O.S.NO.1010 OF 2007 ONS THE FILE OF THE MUNSIFF'S COURT, TRIVANDRUM DATED 12.6.2007.

EXT.R1(B): TRUE COPY OF AFFIDAVIT AND PETITION IN I.A.NO.5191/2007 IN O.S.1010/2007 ON THE FILE OF MUNSIFF'S COURT, TRIVANDRUM.

EXT.R1(C): TRUE COPY OF JUDGMENT IN O.S.NO.587/197 PASSED BY 2ND ADDITIONAL MUNSIFF, TRIVANDRUM DATED 26.6.1998.

/ TRUE COPY/

P.S. TO JUDGE.

P.R. RAMAN & K. HEMA, JJ.

WP(C) No.21221 of 2007

Dated this the 24th day of July, 2007.

JUDGMENT

Raman, J.

Petitioner is a Co-operative Society registered under the Kerala Co-operative Societies Act. They seek a writ of mandamus directing the first respondent to hand over the key of the lock put by them in the shutters of the shop room of the petitioner and for a writ of mandamus directing respondents 3 and 4 to give necessary protection to open and continue their business in the premises of the first respondent covered by Ext.P3 decree till such time the first respondent evicts the petitioner by due process of law.

2. The petitioner is stated to be a sub-tenant under the second respondent and continues to be in possession and doing business in the tenanted premises. According to him, there was a suit filed by the first respondent, which was compromised and eventually a compromise decree was passed and the petitioner continued to occupy the premises. But, subsequently, the first respondent along with some goondas put down the shutters forcibly and thereby the petitioner was prevented from doing his business and the first respondent put a lock over the lock of the petitioner.

3. This writ petition was filed on 9th July, 2007. But the petitioner had preferred a suit O.S.1010/2007 before the Munsiff's Court, Thiruvananthapuram under section 6 of the Specific Relief Act. First respondent filed an affidavit in the said suit. It is averred that the suit is one for restoration of possession under section 6 of the Specific Relief Act. It is also alleged that there is stock worth Rs.25 lakhs inside the plaint

schedule property, but while drafting the plaint, some mistakes had crept in and some omissions have taken place in not including certain prayers which ought to have been made. In these circumstances, the suit was eventually dismissed as withdrawn with liberty to file a fresh suit. Ext.P8 is the copy of the judgment rendered in the suit. Since the petitioner had approached a civil court for appropriate relief against the illegality as alleged against first respondent, this writ petition filed thereafter seeking police protection cannot be entertained and granted since the rights of the parties have to be adjudicated after taking evidence which normally has to be sought from a civil court or other forum competent to adjudicate such right of parties. Since a factual finding regarding possession or dispossession cannot be effectively adjudicated in a proceeding under Article 226 of the Constitution of India, we decline jurisdiction and relegate the petitioner to approach the civil court or other competent forum as the case may be for appropriate relief.

Writ Petition is disposed of as above.

P.R.RAMAN, JUDGE.

K. HEMA, JUDGE.

Krs.